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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

TINA WILCOX, Plaintiff and Respondent, v. DAVID RAY OWEN, Defendant and Appellant.	E069558 (Super.Ct.No. FAMMS1700599) OPINION

APPEAL from the Superior Court of San Bernardino County. Joel S. Agron, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Brown & Stedman and Edwin B. Brown for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Plaintiff and respondent Tina Wilcox (Wilcox) requested a domestic violence restraining order against her brother, defendant and appellant David Ray Owen (Owen)

to protect Wilcox and her husband (Husband). (Fam. Code, § 6300 *et seq*.)[1] On October 24, 2017, the trial court granted the restraining order for a period of 18 months. Owen contends (1) the trial court abused its discretion by granting the restraining order; and (2) the trial court erred by not having a criminal background check for Owen conducted prior to the hearing (§ 6306). We affirm the order.

FACTUAL AND PROCEDURAL HISTORY

A. WILCOX'S VERSION OF THE EVENTS

In 2000, Owen battered his wife. Owen's wife called Wilcox, who "rushed over there, took the children to [Wilcox's] home and [also] took [Owen's wife] to the hospital." Owen constantly talked about firearms. Owen shot at targets shaped like human beings.

Wilcox and Owen had two more siblings, one of which was Lisa Buss. The siblings were involved in the probate of their mother's (Mother) estate. Buss was a copersonal representative of Mother's estate. After Mother's death, Wilcox removed guns from Mother's house. Owen told Wilcox he planned to call the police to report the guns as stolen. Wilcox returned the guns to the estate.

Wilcox believed Mother's estate had not been properly distributed. In 2016, Wilcox moved to leave a room, and Owen blocked her path. Owen screamed that Wilcox had to forgive Buss. Wilcox tried to calm Owen by telling him she could behave civilly with Buss, but "he just kept screaming at [Wilcox]."

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[1] All subsequent statutory references will be to the Family Code unless otherwise indicated.

Wilcox, at the advice of her probate attorney, stopped communicating with Owen regarding the probate matter. After three months, Owen had not heard from Wilcox or Wilcox's probate attorney. Owen sent "multiple e-mails" to Wilcox because the probate case was "going to be thrown out" after 30 days if no action was taken in the case. Owen felt it was "not fair to [Owen], [Buss], or [their] other sister to have to pay again [to restart the probate case] because [Wilcox] will not communicate."

Owen sent a message to Wilcox through "Enough is Enough," which is "a system where you send messages to people stating that enough is enough." The message read, "What do you want? [¶] Just because you have the right does not make it the right thing to do. Your actions are the same as accusing your sister of stealing from you. [¶] IF [*sic*] you think someone cheated you come out and say it, otherwise sign the waiver so we can be done with this. [¶] [Buss] has worked extremely hard getting this far and you want her to spend hours and actual tears just because you have the right. Show some decency and end this. [¶] Do you want more money, if so how much, I will sell things and give it to you. It's time to quit making your sister suffer over something she did not ask for. [¶] I don't know how you feel when you think about Mom but asking [Buss] to pour over all those memories for nothing is cruel, sick, and demented. [¶] If you continue to ignore me I WILL come to your work places and embarrass you both." A second message from Owen to Wilcox read, "You really need to think about what you are doing to others."

Wilcox was a fourth-grade teacher. Husband worked as a minister at a church. Wilcox understood Owen's message as threatening to come to Wilcox's and Husband's

places of work to harass them. Wilcox explained that she watched her classroom door "to see if [Owen] is going to come in and cause a disruption." Husband watched the aisle in the church during services "in case [Owen] walk[s] down the aisle to disrupt [the] morning service or a funeral."

Wilcox asserted the dispute with Owen was ongoing and "being escalated" because Wilcox did not intend to sign the probate documents. Wilcox claimed the dispute "is going to get bigger," and she believed Owen would "act out on his threats."

B. OWEN'S VERSION OF EVENTS

Owen explained that he battered his wife in 2000 because his "wife was doing drugs and sleeping with any and everyone that would supply her with drugs," so Owen "kind of went off the rail . . . and . . . made a lot of mistakes during that time period." Owen asserted, "Since then, I have no violence."

In regard to using the "Enough is Enough" website to send the message to Wilcox, Owen said, "And as far as Enough is Enough, that's the police. The police support the Website and I just kind of thought it's fitting, about enough police have been shot. Enough is enough. Stop violence against our police officers, as to where that came from."

As to the content of the message that Owen sent to Wilcox, he explained that it "was a bluff." Owen hoped the message would encourage Wilcox to communicate with him, similar to the way that he previously encouraged Wilcox to return the guns taken from Mother's house. Owen asserted he sent the message to Wilcox as "an act of

desperation and frustration [because they] were running out of time" in the probate case and Wilcox was not communicating.

Owen asserted he, rather than Buss, communicated with Wilcox because Buss had been in a car accident at the time Owen sent the message to Wilcox. Owen asserted that Buss would communicate with Wilcox in the future regarding any probate issues, so Owen had no reason for future communication with Wilcox. Owen planned to sell his house and move to Ohio, which meant he would be "thousands of miles" away from Wilcox.

C. RULING

At the end of the hearing, the trial court said, "The language that was communicated to Mr. and Mrs. Wilcox does strike me as unequivocal. It is a direct threat to disturb their peace. [¶] Coming to someone's workplace and causing any kind of disturbance has been considered in case law to be a disturbance of the peace of the person and orders are appropriate based on my reading of the case law, in those matters.

"The actual communication is contained in the records. In Mrs. Wilcox's original filings. The sentence that is most troubling to the Court, ['']If you continue to ignore me, I will come to your work place[s] and embarrass you both.['] It was direct, based on testimony that I've heard and Mr. Owen's own admissions, directly to Mr. Wilcox and Mrs. Wilcox. [¶] I'm going to issue an order at this time. It's going to be for a period of 18 months." The restraining order is effective until April 24, 2019.

DISCUSSION

A. ABUSE OF DISCRETION

Owen contends the trial court abused its discretion by granting the restraining order.

We apply the abuse of discretion standard of review. (*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 820.) " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.)

A domestic violence restraining order may be issued upon "proof of a past act or acts of abuse." (§ 6300.) The definition of "abuse" includes "any behavior that has been or could be enjoined pursuant to Section 6320." (§ 6203, subd. (a)(4).) Section 6320 provides that a court may issue an "order enjoining a party from . . . threatening, . . . harassing, . . . or disturbing the peace of the other party." (§ 6320, subd. (a).) "Disturbing the peace of the other party" means "destroy[ing] the mental or emotional calm of the other party." (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497.)

Wilcox provided evidence of a message that Owen sent her reflecting, "I WILL come to your work places [*sic*] and embarrass you both." Owen confirmed he sent the message to Wilcox via a website that concerned police shootings. Wilcox said the message caused her to watch her classroom "door to see if [Owen is] going to come in

and cause a disruption." Wilcox said, "It's changed the way I look at my place of work." Further, at Husband's workplace, he "watch[ed] down the aisle-way in case [Owen] walked down the aisle to disrupt [the] morning service or a funeral that was happening."

The foregoing evidence reflects that Owen sent a message to Wilcox via a website that concerned violence against police officers, and that message caused Wilcox and Husband to worry about actions that Owen would take at their respective workplaces. Wilcox and Husband worried while at work that Owen would disrupt their peace and violate their calm. Thus, there is evidence supporting the trial court's finding that Owen disturbed the peace of Wilcox and Husband. (§§ 6203, subd. (a)(4), 6320, subd. (a).) Therefore, we conclude the trial court did not abuse its discretion in issuing the protective order because there is "reasonable proof of a past act . . . of abuse." (§ 6300.)

Owen contends the trial court erred because Owen did not threaten violence against Wilcox and Husband. The evidence reflects that Owen sent Wilcox a message about embarrassing her and Husband, and the message was sent via a website about shooting police officers. Owen's message caused Wilcox and Husband distress, in that, on multiple occasions, they were watching entryways in anticipation of Owen's possible bad acts. Given that Owen sent his message via a website about shooting police officers, Owen's message could be understood as including an implicit threat of violence. Therefore, we are not persuaded that the trial court erred.

Owen contends he has a constitutional right to free speech and therefore the protective order must be narrowly tailored. Owen asserts, "At the very most, the trial court should have issued a mutual no contact order." The protective order directs Owen not to "[h]arass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate (on the Internet, electronically or otherwise), or block movements" of Wilcox and Husband. Additionally, Owen is directed not to "[c]ontact, either directly or indirectly, by any means, including, but not limited to, by telephone, mail, e-mail, or other electronic means" Wilcox and Husband, with the exception of probate matters, which may be communicated via an attorney or Buss.

Owen does not explain how the foregoing terms of the protective order are so broad as to violate his constitutional right of free speech. (See generally *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 191 [restraining order provisions are content neutral].) Therefore, we do not examine whether the terms of the protective order are unconstitutionally broad. (See *People v. Stanley* (1995) 10 Cal.4th 764, 793 [failure to provide legal analysis forfeits the issue].)

To the extent Owen is asserting he is being unconstitutionally penalized for his speech toward Wilcox, there is no constitutional protection for speech that is threatening. (*People ex rel Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1122; *In re M.S.* (1995) 10 Cal.4th 698, 710.) As explained *ante*, Owen's message that he would come to Wilcox's and Husband's workplaces and embarrass them if they did not comply with his demands, which was sent via a website about shooting police officers, could be

interpreted as implying acts of violence would occur. The threat of violence can be inferred from the message being sent via a website about shooting police officers. Because Owen's message can be interpreted as including an implicit threat of violence, we are not persuaded that Owen's speech was unconstitutionally penalized.

Owen contends the trial court erred by granting the restraining order because the restraining order will result in Owen losing the security clearance that is required for his job, which will then result in Owen losing his job. Owen asserts the trial court should have weighed the equities and declined to issue the restraining order. Owen cites no legal authority to support his position that the trial court should weigh the equities of the situation when deciding whether to grant a restraining order. (See § 6300 [a court may issue a protect order upon "reasonable proof of a past act or acts of abuse"].) Due to the lack of legal authorities supporting Owen's contention, we decline to address the merits of the issue. (See *People ex rel Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 33 [failure to provide legal authorities and legal analysis forfeits the issue].)

B. CRIMINAL BACKGROUND CHECK

Owen contends the trial court erred by not having a criminal background check conducted for Owen.

Section 6306, subdivision (a), provides, "Prior to a hearing on the issuance or denial of an order under this part, the court shall ensure that a search is or has been conducted to determine if the subject of the proposed order has any prior criminal conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; has any misdemeanor conviction

involving domestic violence, weapons, or other violence; has any outstanding warrant; is currently on parole or probation; has a registered firearm; or has any prior restraining order or any violation of a prior restraining order. The search shall be conducted of all records and databases readily available and reasonably accessible to the court . . . ."

It is unclear from the record whether the required criminal background check was conducted because the background check was not mentioned in the trial court. Owen's failure to object to the alleged lack of a criminal background check forfeits the issue on appeal. (See *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 342 ["a party can forfeit its challenge to the noncompliance by failing to object"].)

Nevertheless, for the sake of addressing Owen's contention, we will assume the trial court erred by not having a criminal background check conducted for Owen. Assuming the error occurred, we see no prejudice to Owen. (See *F.P. v. Monier* (2017) 3 Cal.5th 1099, 1107-1109 [a judgment may not be reversed unless the error resulted in a miscarriage of justice].) "To establish prejudice, a party must show 'a reasonable probability that in the absence of the error, a result more favorable to [him] would have been reached.' " (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148, 1161.)

There was nothing in the record indicating that Owen suffered a prior conviction. There was evidence of Owen previously battering his wife, but nothing indicated he was convicted for that conduct. Accordingly, if a criminal background check established that Owen had no prior convictions, then there would be no change in the state of the evidence. Therefore, it is not reasonably likely that a result more favorable to Owen

would have occurred if a criminal background check had been conducted and it showed no prior convictions. As a result, we will not reverse the trial court's order.

DISPOSITION

The order is affirmed. Appellant is to bear his own costs on appeal.[2] (Cal. Rules of Court, rule 8.278(a)(5).)

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MILLER
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.

[2] Wilcox has not made an appearance at this court. Therefore, we do not award her costs on appeal. (See Cal. Rules of Court, rule 8.278(a)(5).)